

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for	:	P-2016-2534980
Approval of its Default Service Program for the	:	
Period from June 1, 2017 through May 31, 2021	:	
(DSP IV)	:	
	:	
and	:	
	:	
Petition of PECO Energy Company for	:	P-2012-2283641
Approval of its Default Service Program	:	
(Customer Assistance Program Shopping Plan)	:	
(DSP II)	:	

RECOMMENDED DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This matter was filed in response to the Commission’s proposed policy statement Order at Docket No. M-2018-3006578 for Electric Distribution Company Default Service Plans – Customer Assistance Shopping Program. The parties submitted an unopposed settlement agreement to end this consolidated proceeding and to defer the issue of the Company’s customer assistance program shopping requirements until the Company’s next default service proceeding. This recommended decision approves the settlement agreement without modification.

HISTORY OF THE PROCEEDING

PECO Energy Company’s (PECO or Company) customers that are enrolled in its customer assistance program (CAP), unlike the majority of other electric distribution companies

(EDCs) in Pennsylvania, are not currently eligible to purchase electric generation supply from an electric generation supplier (EGS). The purpose of the second default service program (DSP II) proceeding by PECO, at Docket No. P-2012-2283641, was to allow CAP customers to shop for generation supply with EGSs at an agreed upon charge that was not to exceed PECO's Price-to-Compare (PTC). The Commission rejected PECO's proposed price ceiling on the grounds that the Commission lacked the legal authority to impose pricing restrictions on EGSs and such a proposal would limit the diversity of shopping options available to CAP customers.¹

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Office of Consumer Advocate (OCA) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (together as TURN *et al.*) appealed the Commission's DSP II Order to Commonwealth Court. The Commonwealth Court determined that the Commission had the authority to impose rules to limit the terms of offers to CAP customers from EGSs to ensure adequately funded, cost-effective and affordable universal service programs.² The Commonwealth Court affirmed the portion of the *DSP II Order* which rejected PECO's proposed EGS pricing limitation based on its conclusion that record evidence supported the Commission's decision that a ceiling on EGS prices for CAP customers was an inappropriate limitation. However, the Commonwealth Court reversed a portion of the *DSP II Order* that rejected a proposal by OCA to prohibit imposing early termination and cancellation fees on CAP customers that shop and remanded the case to the Commission for further proceedings.³

The Commission responded to the Commonwealth Court remand by issuing a Secretarial Letter on May 11, 2016 (May 11 Secretarial Letter), which directed PECO to file a rule revision (CAP Rule Revision) to its CAP Shopping Plan in the DSP II docket to implement

¹ See *Petition of PECO Energy Co. for Approval of its Default Service Program*, Docket No. P-2012-2283641 (Order entered Jan. 24, 2014) (*DSP II Order*), pp. 14, 16-17.

² See *Coalition for Affordable Util. Services and Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1103-1104 (Pa.Cmwth. 2015) (*en banc*), *appeal den.* 136 A.3d 982 (Pa. 2016) (*CAP Shopping Order*).

³ *CAP Shopping Order*, 120 A.3d at 1106-1109.

CAP customer shopping in PECO's service territory during its then current default service program (DSP III).⁴

On March 17, 2016, PECO initiated in a separate proceeding, at Docket No. P-2016-2534980, a petition for approval of its fourth default service program (DSP IV), in which a witness for CAUSE-PA proposed an alternative CAP shopping platform (CAP-SOP Proposal). This CAP-SOP Proposal was supported by OCA and TURN *et al.* The CAP-SOP Proposal would permit PECO's CAP customers to shop only as part of PECO's existing Standard Offer Program subject to additional CAP-specific program rules, including a requirement that CAP-SOP suppliers guarantee a 7% discount off the PTC.

On July 28, 2016, a Joint Petition for Partial Settlement (DSP IV Partial Settlement) was filed by PECO, the Commission's Bureau of Investigation and Enforcement (I&E), OCA, the Office of Small Business Advocate (OSBA), the Philadelphia Area Industrial Energy Users Group (PAIEUG), and Retail Energy Supply Association (RESA). On August 11, 2016, objections to the DSP IV Partial Settlement were filed by Noble Americas Energy Solutions LLC (Noble) which related to PECO's recovery of some PJM charges from distribution customers in its service territory through its non-bypassable transmission charge.

Responses to Noble's objection were filed on August 25, 2016 by PECO, I&E, PAIEUG and RESA.

In compliance with the May 11 Secretarial Letter, on September 1, 2016, PECO filed its proposed CAP Rule Revision to allow CAP customers to shop for electric generation supply without pricing restrictions and with a prohibition against early cancellation or

⁴ The Commission approved the DSP III during the appeal of the *DSP II Order*. See *Petition of PECO Energy Co. for Approval of its Default Service Plan for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Opinion and Order entered Dec. 4, 2014) (*DSP III Order*). PECO continued its Standard Offer Program in DSP III, where default service residential customers who do not participate in CAP and small commercial customers that contacted PECO's customer service center were encouraged to select among a group of EGSs who voluntarily chose to offer customers a twelve-month contract priced at least 7% below PECO's applicable PTC at the time of the offer. See *DSP III Order*, at 18-20, 35.

termination fees.⁵ The CAP Rule Revision permitted CAP customer shopping beginning on April 14, 2017, to permit sufficient time between the start of CAP customer shopping and the implementation of a new Fixed Credit Option CAP for low-income customers on October 1, 2016.⁶

On October 4, 2016, Administrative Law Judge (ALJ) Cynthia W. Fordham issued a Recommended Decision (DSP IV RD), which approved the DSP IV Partial Settlement without modification and denied Noble's objections. The DSP IV RD did not address the CAP shopping issue finding that it is being addressed in the DSP II proceeding.

On October 14, 2016, Exceptions were filed by Noble and OCA and Joint Exceptions were filed by CAUSE-PA and TURN, *et al.* On October 21, 2016, Reply Exceptions were filed by PECO and RESA. PAIEUG filed a letter in lieu of Reply Exceptions on October 21, 2016.

On December 8, 2016, the Commission entered its *DSP IV Order*, which ordered the following:

- (1) Denied the Exceptions of Noble and OCA;
- (2) Granted in part and denied in part the Joint Exceptions of CAUSE-PA and TURN, *et al.*;
- (3) Adopted the DSP IV RD;
- (4) Approved the DSP IV Partial Settlement without modification;
- (5) Denied the objections of Noble to the DSP IV Partial Settlement;
- (6) Approved PECO's DSP IV Petition as modified by the DSP IV Partial Settlement; and
- (7) Deferred all issues regarding PECO's plan to permit CAP customers to shop for electric generation supply to PECO's DSP II proceeding.⁷

⁵ See Letter of Richard G. Webster to Secretary Rosemary A. Chiavetta, *Re: PECO's Customer Assistance Program, Proposed Rule Revision*, Docket No. P-2012-2283641 (September 1, 2016).

⁶ *Id.*, at 3-4.

⁷ See *Petition of PECO Energy Co. for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Opinion and Order entered December 8, 2016) (*DSP IV Order*), at 34-36, 61-63, 65, 67.

Petitions for Reconsideration and/or Clarification of the *DSP IV Order*, from CAUSE-PA and TURN, *et al.*, and OCA, were filed on December 19, 2016. The Commission ordered to consolidate the DSP II and DSP IV proceedings and referred the consolidated proceeding to the Office of the Administrative Law Judge to address and decide the CAP shopping issues raised in both dockets, namely, PECO's CAP Rule Revision, the CAP-SOP Proposal and "all issues relating to the ability of CAP customers to shop for electric generation supply in PECO's service territory."⁸ The Commission made clear that such consolidation was necessary to ensure that the Commission thoroughly and properly evaluates those issues. The Commission stated,

We are of the opinion that consolidating the DSP II and DSP IV proceedings will provide the most appropriate means of ensuring that due process is provided to all affected parties and that the positions of these parties are fully and fairly evaluated. It will also provide this Commission with a single decision containing findings of fact and conclusions of law from which we can evaluate the issues pertaining to the ability of PECO's CAP customers to shop for electric generation supply, and from which the parties will have the opportunity to file Exceptions and Replies to Exceptions.^[9]

A Prehearing Conference Notice scheduled for May 1, 2017, was sent on April 7, 2017, for the consolidated dockets noting the proceeding was assigned to the undersigned.

A Prehearing Conference Order dated April 12, 2017, directed parties to file a prehearing memorandum by April 27, 2017, and the following parties complied with prehearing memoranda and participated in the prehearing conference:

- (1) PECO;
- (2) Direct Energy Services, LLC (Direct Energy);
- (3) I&E;
- (4) CAUSE-PA;
- (5) OCA;
- (6) OSBA;
- (7) PAIEUG;

⁸ See *Petition of PECO Energy Co. for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (Opinion and Order entered March 16, 2017) (*March 2017 Order*), at 20-22.

⁹ *March 2017 Order*, at 22.

- (8) RESA; and
- (9) TURN, *et al.*

The prehearing conference convened as scheduled. Discovery rules were confirmed, a Protective Order from the DSP IV docket dated May 26, 2016, was implemented and a procedural schedule was set.

On May 12, 2017, a Joint Motion was filed at the Commission by the following parties:

- (1) PECO;
- (2) I&E;
- (3) CAUSE-PA;
- (4) OCA;
- (5) OSBA;
- (6) PAIEUG; and
- (7) TURN, *et al.*

The Joint Motion requested that the proceeding be held in abeyance pending the decision of the Commonwealth Court of Pennsylvania in *Retail Energy Supply Ass'n v. Pa. Pub. Util. Comm'n*, 230 C.D. 2017 (Pa.Cmwth, app. filed Feb. 27, 2017) (*RESA*). The Joint Motion was not unanimously filed by all the parties to the proceeding. However, the two parties that did not join the Joint Motion, Direct Energy and RESA, did not object to it.

By Order dated June 5, 2017, the undersigned granted the Joint Motion and the proceeding was stayed pending the outcome of the *RESA* case on appeal or as otherwise directed by the Commission.

In *RESA*, the Commonwealth Court affirmed the Commission's approval of a version of the CAP-SOP Proposal for PPL Electric's low-income customers finding that the Commission had authority to place conditions under which CAP participants could receive CAP benefits.¹⁰ However, during the suspension of these dockets, Metropolitan Edison Company,

¹⁰ *Retail Energy Supply Ass'n v. Pa. Pub. Util. Comm'n*, 185 A.3d 1206, 1215-18 (Pa.Cmwth. 2018) (*en banc*).

Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the FirstEnergy EDCs) filed petitions for approval of their default service plans for the period June 1, 2019 through May 31, 2023.¹¹ The FirstEnergy EDCs' Petitions included rules for its electric generation shopping CAP customers. By Opinion and Order dated September 4, 2018, the Commission approved a set of CAP shopping rules that would prohibit CAP customers from paying prices that were higher than FirstEnergy's PTC and prohibited early termination and cancellation fees.¹²

On December 20, 2018, Commissioner David Sweet moved that the Commission create a proposed policy statement for uniformity in CAP shopping practices and uniformity among EDCs for CAP shopping requirements in default service plan filings. The CAP shopping requirements included:

- (1) A CAP shopping rate that is at or below the EDC's PTC during the life of the contract between the EGS and the customer;
- (2) The contract between the EGS and the CAP customer contains no early termination or cancellation fees; and
- (3) A restriction that the CAP customer may re-enroll with a product that complies with the above two requirements, switch to another EGS offering the same two requirements, or be returned to default service.¹³

¹¹ See, *Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., West Penn Power Co. for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858, and P-2017-26378566 (Opinion and Order entered September 4, 2018) (*FirstEnergy DSP V Order*).

¹² *Id.*, at 58-59. See also *Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co., West Penn Power Co. for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858, and P-2017-26378566 (Order on Reconsideration entered November 1, 2018), at 24 (clarifying that effective June 1, 2019, EGS rates for CAP customers "must *always* be at or below the PTC") (emphasis in original). On February 28, 2019, the Commission entered a Final Order adopting rules and procedures for the CAP shopping program approved in the *FirstEnergy DSP V Order*.

¹³ Motion of Commissioner David Sweet, *Electric Distribution Co. Default Service Plans – Customer Assistance Program (CAP) Shopping*, Docket No. M-2018-3006578 (adopted December 20, 2018) at 3 (Sweet Motion).

Additionally, the Sweet Motion specifically stated, “I encourage the parties in [the consolidated PECO DSP II and DSP IV] proceeding to consider the provisions outlined in this Motion when activity in that litigation resumes...”¹⁴

In compliance with the Sweet Motion, which was approved by the Commission, a proposed policy statement Order, *Electric Distribution Co. Default Service Plans – Customer Assistance Program Shopping*, was entered on February 28, 2019, at Docket No. M-2018-3006578 (*Proposed CAP Shopping Policy Stmt.*). The proposed policy statement is to be published in the *Pennsylvania Bulletin* for comments from interested parties within 45 days of the publication date. The *Proposed CAP Shopping Policy Stmt.* stated,

The mechanics of CAP shopping programs should be addressed by EDCs in their next default service plan proceedings following adoption of the proposed policy statement, so as not to impact current, Commission-approved programs, and to allow for due process for all parties.^[15]

On March 29, 2019, PECO, CAUSE-PA, OCA and TURN, *et al.* (collectively, Joint Petitioners) filed a Joint Petition for Settlement (Settlement) of the consolidated PECO DSP II and DSP IV proceeding. The Joint Petitioners represent that I&E, Direct Energy, OSBA, PAIEUG and RESA do not oppose the Settlement. Implicit in the Joint Petition is the request to lift the stay in this matter in order to proceed and approve the Settlement.

This matter is ripe for recommended decision.

RELEVANT TERM OF THE SETTLEMENT PETITION

The Joint Petitioners agree to termination of the [consolidated DSP II and DSP IV dockets] and to defer the issue of shopping for electric generation service by PECO CAP customers until PECO’s

¹⁴ *Id.*

¹⁵ Docket No. M-2018-3006578 (Order entered February 28, 2019) at 6.

next default service proceeding, which the Company expects to initiate in March 2020.^[16]

DISCUSSION

A. Applicable Legal Standard

It is Commission policy to promote settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. A settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 15; *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Commission Opinion and Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

The Joint Petitioners have reached an accord on the issues presented in this proceeding and submitted the Settlement for Commission review. In reviewing the Settlement, the question which must be answered is whether it is in the public interest.

¹⁶ *Petition of PECO Energy Co. for Approval of its Default Service Program (CAP Shopping Plan) (DSP II) and Petition of PECO Energy Co. for Approval of its Default Service Program for the Period June 1, 2017 through May 31, 2021 (DSP IV)*, Docket Nos. P-2012-2283641 and P-2016-2534980, respectively, (Joint Petition for Settlement filed March 29, 2019) at 8, ¶ 12.

B. Analysis

The Joint Petitioners assert that the Settlement promotes efficiency because its approval would avoid repeated litigation of issues in three separate and distinct proceedings, which are:

- (1) the instant proceeding;
- (2) the CAP Shopping Policy Stmt.; and
- (3) the next default service plan filed by PECO.¹⁷

Compounded with the potential repeated litigation are the administrative costs coupled with the litigation. The approval of the Settlement would avoid the burden of these administrative costs on the Commission as well as the parties to this proceeding.¹⁸ Specifically, the Joint Petitioners state:

The Joint Petitioners believe that consideration of any future CAP shopping proposals will be more efficient without the need to address prior default service proceedings and evidence that predated the *RESA Order*, the implementation of PECO's Fixed Credit Option CAP, the new CAP shopping rules recently adopted in the *FirstEnergy DSP V Order*, and the *Proposed Policy Statement Order*.^[19]

Moreover, the Joint Petitioners contend that this procedure is consistent with the intent of the Commission articulated in the *March 2017 Order* (to fully and fairly consider all issues related to a PECO CAP customer to shop for electric generation supply in a single decision) and the *Proposed CAP Policy Stmt.* (mechanics of CAP shopping programs are to be considered in the next default service proceeding of an EDC once the policy statement is adopted by the Commission).²⁰

¹⁷ Joint Petition for Settlement at 8, ¶ 13.

¹⁸ *Id.* at 8-9.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 9-10.

The Joint Petitioners note the possibility that the next PECO DSP filing may predate the adoption of the *Proposed CAP Policy Stmt.* However, the Joint Petitioners assert that the above contention of efficiency is still warranted since the new proceeding will not have the dated testimony of the DSP II and DSP IV consolidated proceeding and will develop a record in the context of *RESA*, 185 A.3d 1206 (Pa.Cmwlt. 2018) and the *FirstEnergy DSP V Order.*

It is compelling that there is no objection to the Settlement. I agree with all the assertions made by the Joint Petitioners. Furthermore, to continue with the present record containing testimony of the DSP II and DSP IV consolidated proceeding would result in an encumbered and burdensome record causing unnecessary complications and possible confusion because the testimony may be outdated and stale.

C. Conclusion

The Joint Petition for Settlement proposes a reasonable resolution to this consolidated docket and is in the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction relating to an EDC's obligation to serve customers in its service territory. 66 Pa.C.S. § 2807(e) (Electricity Generation Customer Choice and Competition Act); 52 Pa.Code §§ 54.184, 54.185, 69.1804.

2. A default service provider shall file a DSP with the Commission's Secretary's Bureau no later than 12 months prior to the conclusion of the currently effective default service program or Commission-approved generation rate cap for that particular EDC service territory, unless the Commission authorized another filing date. Thereafter, the DSP shall file its programs consistent with schedules identified by the Commission. 52 Pa.Code § 54.184(a).

4. The policy of the Commission is to promote settlements. 52 Pa.Code §§ 5.231(a) and 69.401.

5. Despite the Commission's policy to promote settlements, the Commission's determination to approve a proposed settlement is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. Pub. Util. Comm'n. v. PECO Energy Co.*, Docket No. R-2018-3000164 (Order entered Dec. 20, 2018), at 15; *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165, (Commission Opinion and Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

6. The proposed Joint Petition for Settlement submitted by the Joint Petitioners is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the consolidated proceeding of Petition of PECO Energy Co. for Approval of its Default Service Program (Customer Assistance Program Shopping Plan) (DSP II), at Docket No. P-2012-2283641; and Petition of PECO Energy Co. for Approval of its Default Service Program from the Period June 1, 2017 through May 31, 2021 (DSP IV), at Docket No. P-2016-2534980 is no longer held in abeyance as directed by Order dated June 5, 2017.

2. That the Joint Petition for Settlement filed by PECO Energy Company, the Office of Consumer Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia on March 29, 2019, at Docket Nos. P-2012-2283641 and P-2016-2534980 be approved and adopted without modification.

3. That the Secretary's Bureau mark closed the consolidated proceeding of Petition of PECO Energy Co. for Approval of its Default Service Program (Customer Assistance Program Shopping Plan) (DSP II), at Docket No. P-2012-2283641; and Petition of PECO Energy Co. for Approval of its Default Service Program from the Period June 1, 2017 through May 31, 2021 (DSP IV), at Docket No. P-2016-2534980.

Dated: April 30, 2019

/s/
Angela T. Jones
Administrative Law Judge